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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,972	03/22/2004	Stephen Donovan	17500CON (BOT)	2337

7590 07/16/2004

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EXAMINER	
PORTNER, VIRGINIA ALLEN	

ART UNIT	PAPER NUMBER
1645	

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/806,972	DONOVAN, STEPHEN	
	Examiner	Art Unit	
	Ginny Portner	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *17 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/17/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-23 are pending.

Information Disclosure Statement

1. The information disclosure statement filed February 17, 2004 has been considered.

Claim Objections

2. Claim 7 is objected to because of the following informalities: Claim 7 recites the term "effect"; this term lacks antecedent basis in claim 1 from which it depends which recites the term "symptom". How do the effect and the symptom differ from one another, or are they one in the same? Appropriate correction is required.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Please Note: The examiner is reading the term "**intrathecal** to mean (Merriam Webster and On-line Medical Dictionary definitions) "introduced into or occurring in the space under the arachnoid membrane of the brain or spinal cord". A methods step of administering a clostridium neurotoxin by an intrathecal route therefore defines a species of intracranial route in light of Applicant's definition at page 22, lines 19-21 of the instant specification.

2. Claims 1-5,7-12,17-18,20 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-3,5-12 of copending Application No. 10/421,504. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The instant claims are directed to a genus of methods of treating a neuropsychiatric disorder, and the claims of co-pending application 10/421,504 are directed to a species of invention, specifically a method of treating epilepsy, a species within the instantly claimed genus. A species anticipates the instantly claimed genus; a genus claim is obvious over a species. Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

3. Claim 23 is provisionally rejected under the judicially created doctrine of double patenting over claims 10-11 of copending Application No. defined by PG-Pub 20040062776. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The instant claims are directed to a genus of methods of alleviating any symptom of a neuropsychiatric disorder, and the claims of co-pending application are directed to a species of invention, specifically a method of treating fibromyalgia, a species within the instantly claimed genus. A species anticipates the instantly claimed genus; a genus claim is

obvious over a species. Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

4. Claim 23 is provisionally rejected under the judicially created doctrine of double patenting over claims 1-5,10-12 of copending Application No. defined by PG-Pub 20040018213. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The instant claims are directed to a genus of methods of alleviating any symptom (pain or muscle spasm; two different types of symptoms) of a neuropsychiatric disorder, and the claims of co-pending application are directed to a species of invention, specifically a method of treating pain, a species within the instantly claimed genus. A species anticipates the instantly claimed genus; a genus claim is obvious over a species. Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

5. Claim 23 is provisionally rejected under the judicially created doctrine of double patenting over claims 1, 3-4, 10-12 of copending Application No. defined by PG-Pub

20040018212. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The instant claims are directed to a genus of methods of alleviating any symptom (pain or muscle spasm; two different types of symptoms) of a neuropsychiatric disorder, and the claims of co-pending application are directed to a species of invention, specifically a method of treating pain, a species within the instantly claimed genus. A species anticipates the instantly claimed genus; a genus claim is obvious over a species. Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

6. Claims 1-5,7-12, 17-18, 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-13 of U.S. Patent No. US Pat. 6,620,415. Although the conflicting claims are not identical, they are not patentably distinct from each other because: The instant claims are directed to a genus of methods of treating a neuropsychiatric disorder, and the allowed claims are directed to a species of invention, specifically a method of treating Parkinson's disease, a species within the instantly claimed genus. A species anticipates the instantly claimed genus; a genus claim is obvious over a species. The allowed species anticipates the instantly claimed genus of methods.

7. Claims 1-5,17-18 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5 of U.S. Patent No. US Pat. 6,372,226. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

the instantly claimed invention is directed to a genus of methods for treating a symptom of any neuropsychiatric disorder with a Clostridial neurotoxin, or a botulinum toxin, and the allowed claims are directed to a species of the instantly claimed genus directed, specifically a method of alleviating pain through administering the neurotoxin to a specific intracranial site, specifically an "intrathecal" or an "intraspinal" site. The allowed species anticipates the instantly claimed genus of methods.

8. Claims 1-5,17-18 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 13 of U.S. Patent No. US Pat. 6,333,037 Although the conflicting claims are not identical, they are not patentably distinct from each other because:

the instantly claimed invention is directed to a genus of methods for treating a symptom of any neuropsychiatric disorder with a Clostridial neurotoxin, or a botulinum toxin, and the allowed claims are directed to a species of the instantly claimed genus directed, specifically a method of treating pain through administering the neurotoxin to a intraspinal (claims 1-3), cranial site (claim 13). The allowed species anticipates the instantly claimed genus of methods.

9. Claims 1-5,17-18 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3,5,9-17 and 13 of U.S.

Patent No. US Pat. 6,306,403. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

the instantly claimed invention is directed to a genus of methods for treating a symptom of any neuropsychiatric disorder with a Clostridial neurotoxin, or a botulinum toxin, and the allowed claims are directed to a species of the instantly claimed genus directed, specifically a method of treating Parkinson's disease through administering the neurotoxin to an intracranial. The allowed species anticipates the instantly claimed genus of methods.

10. Claims 1-5,17-18 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3,12-13 (cranial region of the spine),28-29,36 of U.S. Patent No. US Pat. 6,113,915 Although the conflicting claims are not identical, they are not patentably distinct from each other because:

the instantly claimed invention is directed to a genus of methods for treating a symptom of any neuropsychiatric disorder with a Clostridial neurotoxin, or a botulinum toxin, and the allowed claims are directed to a species of the instantly claimed genus directed, specifically a method of treating pain through administering the neurotoxin to an intraspinal location. The allowed species anticipates the instantly claimed genus of methods.

11. Claims 1-5,17-18 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3,12-13 (cranial region of the spine),28-29,36 of U.S. Patent No. US Pat. 6,113,915 Although the conflicting claims are not identical, they are not patentably distinct from each other because:

the instantly claimed invention is directed to a genus of methods for treating a symptom of any neuropsychiatric disorder with a Clostridial neurotoxin, or a botulinum toxin, and the allowed claims are directed to a species of the instantly claimed genus directed, specifically a method of treating pain through administering the neurotoxin to an intraspinal location. The allowed species anticipates the instantly claimed genus of methods.

12. Claim 23 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. US Pat. 6,623,742 Although the conflicting claims are not identical, they are not patentably distinct from each other because:

the instantly claimed invention is directed to a genus of methods for treating a symptom of any neuropsychiatric disorder with a Clostridial neurotoxin, or a botulinum toxin, and the allowed claims are directed to a species of the instantly claimed genus directed, specifically a method of treating fibromyalgia through administering the neurotoxin to a peripheral location. The allowed species anticipates the instantly claimed genus of methods.

Claim Rejections - 35 U.S.C. §112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

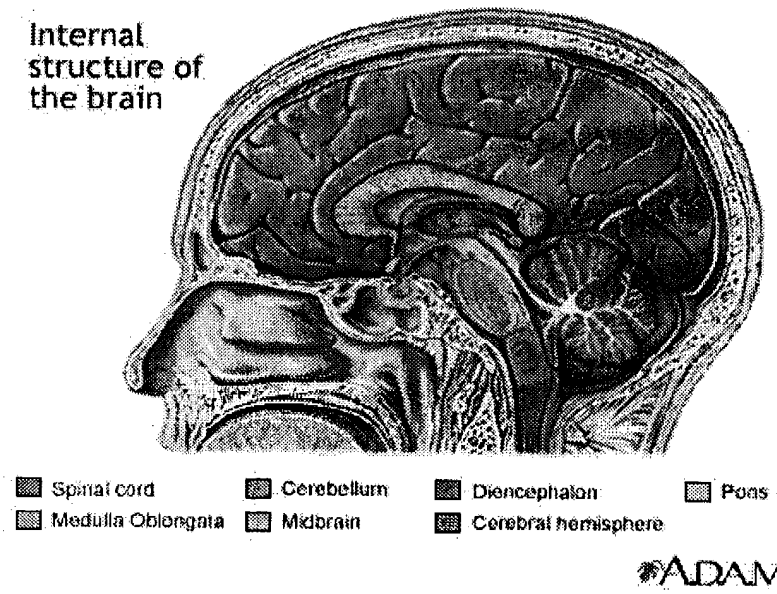
> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph (scope), because the specification, while being enabling for a method of alleviating at least one symptom associated with a neuropsychiatric disorder with specific, non-toxic doses of clostridial neurotoxin, delivered locally to the cite which effects the symptom to be alleviated, does not reasonably provide enablement for the administration of any dosage size to any local intracranial location of a mammal in a method of treating any neuropsychiatric disorder. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

13. The invention claims comprises the step of administering a Clostridial neurotoxin to any intracranial location, as defined in the instant specification at page 22, lines 19-21, to include the administration of Clostridial neurotoxin to "the dorsal end of the spinal cord and includes the medulla, brain stem, pons, cerebellum and cerebrum". The definition includes extensive portions of the brain, and is not limited to the administration just to the skull.



The claims still recite the phrase "Clostridial neurotoxin". The dosage amount is an amount that is effective to eliminate a symptom, but the amount is not defined to be non-toxic but merely effective. The claims broadly recite the administration of a Clostridial neurotoxin to any part of the brain that is within the definition of "intracranial" provided by the instant

specification (page 22, lines 19-21) "the dorsal end of the spinal cord and includes the medulla, brain stem, pons, cerebellum and cerebrum." The claims are not enabled for the administration of a Clostridial neurotoxin in any effective amount to any intracranial location, which includes "the dorsal end of the spinal cord and includes the medulla, brain stem, pons, cerebellum and cerebrum." The administration of any effective amount of a Clostridial neurotoxin within, at or near the medulla, brain stem, pons, cerebellum and cerebrum would effectively induce paralysis, and even death. The definition of "intracranial" includes extensive portions of the brain, and the claims are not limited to the administration of Clostridial neurotoxin just to the skull.

As Clostridial toxins are among the most toxic substances known for man and have caused blurred vision, dry mouth, constipation, dizziness, abdominal cramps, nausea/vomiting, general weakness, apathetic behavior, orthostatic hypotension, impaired micturition/sexual function, muscle paralysis (US Pat. 5,562,907, col. 1, lines 35-37) and death, complications due to apparent diffusion of the toxin from the infected muscle(s) to adjacent muscles resulting in difficulty in swallowing, stomach feeding, resulting in paralysis (see Pat. 5,562,907, col. 5, lines 38-65 and col. 6, lines 1-14) and toxin leakage induced edema, serum albumin decrease and injury to vascular endothelium (see col. 8, lines 45-65), the local administration of any amount of a Clostridial toxin to any location of a mammal, would not serve to treat a neuropsychiatric disorder.

The claims recite the intracranial administration of any effective amount of any Clostridial toxin to a patient. The person of skill in the art would be required to carry out undue experimentation to utilize any amount of Clostridial toxin administered to any site intracranially in order to obtain a desired positive therapeutic effect, especially in light of the fact that Clostridial toxins are known to evidence extensive negative side effects and even death of mammals if the amount of toxin is too high and diffusion of the neurotoxin to additional

locations of the brain, would and could result in extensive negative side effects and death of the patient due to inactivation of essential brain nerve functions.

While claim 6 recites a range of dosage amounts, the cite of administration is any intracranial location which is one that may or may not evidence a direct effect on the receptors that produce symptoms associated with neuropsychiatric disorder. A neurotoxin administered to any intracranial location to effect the alleviation of chronic tic of the face would not predictably define a means for treating a neuropsychiatric disorder if the neurotoxin were not administered to nerves that are responsible for the tic action of the face.

Additionally the instant specification teaches that the dosage permissible for administration of botulinum toxin A differs from the dosage form for Botulinum neurotoxin B (instant specification). Administration of the same dosage level for every clostridial neurotoxin could result in an undesired systemic effect, and could result in a negative, non-treatment of a neuropsychiatric disorder.

While claims 8-9 define the site of administration to be the direct intracranial administration to specific locations in the cranium of the patient, the amount administered is not so claimed as to enable the animal to evidence a therapeutic effect, without negative side effects; the amount administered is not required to be a non-toxic, therapeutically effective amount, and large amounts of Clostridial toxin could result in paralysis or death of the patient .

The Clostridial neurotoxin molecule is fully toxic (" neurotoxin" recited in claims) to any tissues to which it comes in contact, thus the genus of methods now claimed is not enabled for the full scope in light of the fact that any amount of toxin administered would not serve to treat a neuropsychiatric disorder and would not serve to alleviate at least one symptom of a neuropsychiatric disorder without undesirable, deleterious toxic effects.

The Wands factors have been considered in the establishment of this instant scope of enablement rejection:

1. the quantity of experimentation necessary would be undue for the utilization of any amount of any clostridial toxin administered to any intracranial site of a patient, the local site being in the vicinity (definition provided by instant specification for the term "local") of a desired region;

2. the amount of direction or guidance presented for utilization of dosage amounts not disclosed to be within a non-toxic range, to the specific receptors associated with a neuropsychiatric disorder, the negative side effects could be deleterious to the patient, and would not result in treatment of a neuropsychiatric disorder;

3. the presence or absence of working examples utilizing local administration sites other than specific regions associated with specific symptoms to be alleviated have not been provided;

4. the nature of the invention is one that without specific guidance, would result in a method that could result in paralysis of the patient or even death;

5. the state of the prior art is one in which specific sites, and dosage ranges provide a desired result, but administration of any amount to any local site, of any Clostridial neurotoxin that would not serve to interact with sympathetic nerve or inhibiting release of acetylcholine from cholinergic parasympathetic nerve endings associated with alleviating symptoms associated with a neuropsychiatric disorder;

6. the relative skill of those in the art: high;

7. the predictability or unpredictability of the art: unpredictable negative side effects when present in undesirable locations and locations, especially in the brain which has extensive nerve ending which would be greatly effected, and functionality inhibited (blocked for weeks or months) by the administration of botulinum toxin; and

8. breadth of the claims: broad but definite.

In view of the prior art teaching (reference cited above and specific teachings of the instant specification) that neurotoxins administered to any intracranial site, in any amount, that may or may not interact with parasympathetic nerves, would not predictably result in the positive desired effect of alleviating at least one symptom of neuropsychiatric disorder, the instantly claimed invention is enabled only for a scope of what is now claimed.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Please Note: The claims are being read in light of Applicant's definition of "intracranial" , see specification at page 22, lines 19-21. Applicant's definition of "intracranial includes locations", within, at or near the cranium, the dorsal end of the spinal cord, the medulla, brain stem, pons, cerebellum and the cerebrum. " The definition includes the facial pontine root entry zone, which is a site near the pontine region of the cranium (instant claim 9, is directed to the "pontine region").

15. Claims 1-5,7-8,10,12-20 rejected under 35 U.S.C. 102(b) as being anticipated by Binder (US Pat. 5,714,468).

Binder discloses the claimed invention directed to a method of treating a neuropsychiatric disorder (see Table 1(b), col. 2 (a depressive anxiety state); col. 6, line 64-65), specifically anxiety (muscle tension headache, see col. 8, line 33) induced migraine headache, and the method comprising the step of :

Administering intracranially (administration to muscles of cranium, see col. 7, lines 31-32; abstract, and col. 19, claims 2-3, 13-14, and 16; see col. 5, lines 66-67 and col. 6, lines 1-13) a Clostridial neurotoxin (Botulinum toxin A (see col. 5, line 4; see all claims) or tetanus toxin (see col. 5, line 11-19) to a patient to alleviate at least one symptom for between about 1 month to about 5 years (see col. 7, line 35: about 3 to 6 months) due to inhibition of neurotransmitter release.

The clostridial neurotoxin is administered to a lower brain region, specifically the percerus and/or temporal muscle regions (see claims 2-3, col. 19), wherein the neurotoxin is taught to include a modified Clostridial neurotoxin which is a ibc fragment of tetanus toxin (see claim 10, col. 20), a toxoid of tetanus toxin (see col. 5, lines 11-19), a toxoid of botulinum toxin (see col. 5, line 22) or a pentavalent toxoid of all known botulinum serotypes (see col. 5, lines 6-7). The Ibc fragment tetanus toxin has at least one amino acid deleted as compared to the native neurotoxin and is a specific species of clostridial neurotoxin (see col. 5, lines 17-19) and is a derivative and a fragment of a recombinantly produced or natural/purified neurotoxin.

The Clostridial neurotoxins administered by Binder are the neurotoxins of the instant claims, and would function in the same or equivalent manner (see Binder, col. 2, lines 60-63). Clostridial neurotoxin to an intracranial site, the administration of neurotoxin into or near (see col. 7, lines 31-33) muscle tissue near the cerebellum and cerebrum, specifically the occipitalis (see col. 6, lines 20-26), procerus, frontalis (see col. 7, line 6) and temporalis locations (see Binder, claim 3), which also includes administering to the cranium (cranium means skull, see all

Binder claims, relative to the discussion provided at column 7, lines 16-35). The reference anticipates the instantly claimed invention.

16. Claims 1-8,10-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Aoki et al (US Pat. 6,458,365).

Aoki et al disclose the claimed invention directed to a method of treating a neuropsychiatric disorder (see title, Example 12, col. 9, lines 45-47, tension), an anxiety (muscle tension headache, see col. 10, lines 4-62) induced tension headache, and the method comprising the step of :

Administering intracranially (administration to muscles of head, see col. 10, claim 1) a Clostridial neurotoxin (Botulinum toxin A, B, C, D, E, F and G; dosage: see col. 4, lines 34-51) to a patient to alleviate at least one symptom for between about 1 month to about 5 years (see col. 10, claim 14, 1-7 days) due to inhibition of neurotransmitter release (see col. 10, claim 8; col. 9, lines 48-53). The symptom reduced is the headache. Inherently the reference anticipates the instantly claimed invention.

17. Claims 1-4, 7, 9, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Micheli et al (1998).

Micheli et al disclose the claimed invention directed to a method of treating a symptom associated with a neuropsychiatric disorder (hemi facial spasm, unilateral muscle twitching), the method comprising the step of :

Administering to the pontine region (instant claim 9, facial pontine root entry zone) a Clostridial botulinum neurotoxin to a patient, wherein at least one symptom was alleviated for up to about 5 years. Inherently the reference anticipates the instantly claimed invention.

18. Claims 1-5, 7,12-20, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Auchus, A et al (1995).

Auchus, A et al disclose the instantly claimed invention directed to a method of alleviating at least one symptom associated with a neuropsychiatric disorder (see title, cervical

dystonia), wherein the disorder is Alzheimer's disease (see col. 1, paragraph 2) and the neurotoxin administered is botulinum toxin A (see col. 1, paragraph 4).

The botulinum toxin A administered was able to effect the cervical muscles, an intracranial region of the head of the patient, resulting in treatment of dystonia associated with dementia. The administering being accomplished through injection of a plurality of locations near the cervical muscles of the neck/head, specifically the sternocleidomastoid, scalenus, splenious capitis, and trapezius muscles, which resulted in the "dystonic cervical muscles" relaxing. The locations injected were near the brain area which needed to relax. The disclosure of Auchus et al falls within the scope of the definition provided by the instant specification.

The positive treatment effect lasted about a month, specifically three weeks (see col. 1, paragraph 5) and provided relief associated with pain or discomfort from dystonia (see col. 1, paragraph 6) , as well as relieved agitated behavior (col. 1, paragraph 6). The reference anticipates the instantly claimed invention.

19. Claims 1-5, 7,17-19, 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bassitt et al.

Bassitt et al disclose the instantly claimed invention directed to a method of alleviating at least one symptom associated with a neuropsychiatric disorder (see title, tardive dystonia), wherein the disorder is paranoid schizophrenia (see col. 1, paragraph 2) and the neurotoxin administered is botulinum toxin (see col. 1, paragraph 3).

The botulinum toxin administered was able to effect the muscles of head (cranium) of the patient, specifically the muscles of the eyelid (col. 1, paragraph 3) resulting in treatment of dystonia associated with paranoid schizophrenia.

The positive treatment effect lasted about five months (see col. 1, paragraph 3 (from 10/1998 to 3/1999) and provided relief associated with muscle spasms. The reference anticipates the instantly claimed invention.

20.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (703)308-7543. The examiner can normally be reached on Monday through Friday from 7:30 AM to 5:00 PM except for the first Friday of each two week period.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909. The fax phone number for this group is (703) 308-4242.

The Group and/or Art Unit location of your application in the PTO will be Group Art Unit 1645. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to this Art Unit.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Vgp
July 06, 2004

L. F. Smith

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